

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Steven Pelletier

v.

Civil No. 05-cv-417-SM

Bruce Cattell, Warden,
New Hampshire State Prison

REPORT AND RECOMMENDATION

Before the Court is Steven Pelletier's most recent pleading entitled "Response Complying with Order of March 28, 2006" (document no. 9). As directed by this Court in its March 28, 2006 Order, Pelletier has amended his habeas petition in an effort to demonstrate that several claims, for which I have previously found Pelletier did not demonstrate exhaustion, (numbered in my March 28 Order as 1a, 1c, 2a, 6b, and 7) are, in fact exhausted. Pelletier has attached a number of his state court pleadings to his response in support of his assertion that his claims have been exhausted. Further, Pelletier has indicated his intention to fully exhaust one of his claims, (number 8 in my March 28 Order). Pelletier states that, to the extent he has still failed to demonstrate exhaustion for any of his other claims, he will waive those claims.

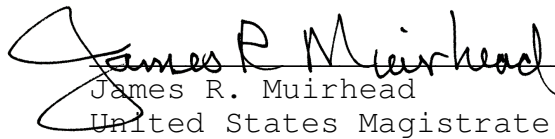
I find that Pelletier has now demonstrated that he has exhausted claim 1c, 2a, and 6b in his pleadings before the state Supreme Court. However, I find that as to claims 1a and 7, Pelletier has failed to demonstrate exhaustion. Pelletier's filings indicate that the federal nature of claims 1a and 7 was not raised in the state courts. The closest Pelletier comes is referring to the issues as "Constitutional in nature" in his state court pleadings. I find that this is insufficient to fairly present a claim that his rights under federal law were violated to the state courts for consideration.

In accordance with his stated intent, I find that Pelletier waives claims 1a and 7. I find that at this time Pelletier has demonstrated exhaustion for claims 1b, 1c, 2a, 2b, 3, 4, 5, 6a, and 6b. Pelletier asserts that claim 8 is still in the process of being exhausted, that he does not wish to waive that claim, and that he intends to continue to comply with the notice requirements of my March 28 Order.¹ Accordingly, I recommend that claims 1a and 7 be dismissed as they have been waived by the

¹I note that at this time it appears that the federal nature of claim 8 has been raised in petitioner's brief before the state Supreme Court. Accordingly, when exhaustion is completed on this claim, if petitioner is unsuccessful in the state courts, this claim will be able to go forward with the other claims deemed exhausted herein.

petitioner. I further recommend that the stay and previously ordered notice requirements be continued in this matter pending exhaustion of claim 8.

Any objections to this Report and Recommendation must be filed within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the district court's order. See Unauthorized Practice of Law Comm. v. Gordon, 979 F.2d 11, 13-14 (1st Cir. 1992); United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986).


James R. Muirhead
United States Magistrate Judge

Date: April 12, 2006

cc: Steven Pelletier, *pro se*